Supreme Court, U.S.
FILED
OCT 8 1998
OFFICE OF THE CLERK

(2)

No. 98-410

In the

Supreme Court of the United States

October Term, 1998

William Timothy Fister,
guardian and parent on behalf of
Mary Fister,

Petitioner,

v.

Minnesota New Country School,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Phillip A. Cole
Counsel of Record
Kay Nord Hunt
Ehrich L. Koch
LOMMEN, NELSON, COLE
& STAGEBERG, P.A.
1800 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 339-8131

Arthur E. Anderson
ANDERSON LAW OFFICE
108 South Main Street
Le Sueur, MN 56058-1909
(507) 665-3349

Attorneys for Respondent
Minnesota New Country School

1998 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

54 pp

TABLE OF CONTENTS

STATEMENT OF THE CASE 1

A. Introduction 1

B. MNCS and Its Policies 1

C. Harassment by Mary Fister 3

D. History of Mary Fister's Suspensions and Expulsion 6

E. Statement of the Proceedings 9

REASONS FOR DENYING THE WRIT 11

CONCLUSION 14

TABLE OF AUTHORITIES

Statutes:

42 U.S.C. § 1983 1

Minn. Stat. § 127.29 ..... 2, 7, 12

Cases:

Bethel School Dist. No. 403 v. Fraser 9
478 U.S. 675 (1986)

Board of Educ., Island Trees Union Free School Dist
No. 26 v. Pico 12
457 U.S. 853 (1982)

Hazelwood School Dist. v. Kuhlmeier 9, 11, 12
484 U.S. 260 (1988)

Tinker v. Des Moines Indep. Community
School Dist. 9, 12, 13
393 U.S. 503 (1969)

STATEMENT OF THE CASE

A. Introduction.

Petitioner William Fister, on behalf of his daughter Mary Fister, appealed to the United States Court of Appeals for the Eighth Circuit from the United District Court for the District of Minnesota's grant of summary judgment in favor of Respondent/Defendant Minnesota New Country School (MNCS), a charter public school. The district court dismissed Petitioner's 42 U.S.C. § 1983 action in which he alleged First Amendment and equal protection violations. (Petitioner's Appendix [P.A.] 5.) The United States Court of Appeals for the Eighth Circuit, in an unpublished per curiam opinion, affirmed. (P.A. 1.)

In seeking certiorari from this Court, Petitioner has failed to set out accurately the record upon which summary judgment was granted and affirmed. Petitioner makes assertions of "fact" which have no record support. It is therefore necessary for MNCS to present this statement of the case.

B. MNCS and Its Policies.

MNCS is a relatively small public school in Le Sueur, Minnesota, which serves approximately 85-90 middle and secondary students. During the 1995-96 school year, Mary Fister was a seventh grade student.

MNCS distributed a document entitled "MNCS Discipline Policy and Operating Procedures, Daily Operating Procedures, 1995-1996" (MNCS Policy) to its students. Paragraph 14 entitled "Health and Safety" states as follows:

> 14. Health and Safety: Students may in no way endanger the safety, health, or well being of

> other students or school personnel. Fighting, threatening language, other endangerment or harassment will be grounds for suspension and/or expulsion.

The MNCS Policy further provides that unless otherwise indicated, any violation of these MNCS policies were subject to Minnesota's Fair Pupil Dismissal Act of 1974, Minn. Stat. § 127.29, which governs a school's dismissal of a student. Minn. Stat. § 127.29, subds. 2(a) and (b), provide that a pupil may be dismissed for "willful violation of any reasonable school board regulation" or "willful conduct that materially and substantially disrupts the rights of others to an education."

For the first infraction of a school policy, parents are notified by mail that a three-day suspension might result and a parental conference held before readmittance. For the second infraction, parents are notified by mail and expulsion proceedings may be instituted by MNCS. Mary Fister admitted she had read and understood MNCS's policies. She understood that "harassment" would be grounds for suspension and/or expulsion from MNCS.

Each student at MNCS had a designated work space provided by the school which consisted of a table and a chair, with a divider directly in front of the student's desk that a student could pin things on. Paragraph 12 of the MNCS Policy provides in part as follows:

> 12. Displays: Students may decorate their individual work space but all pictures must be placed on bulletin boards, not taped to the wall. . . .

While students were allowed to decorate these areas, any item viewed to be of an inappropriate nature would be taken down by the MNCS staff. As a student at MNCS, Mary Fister understood that certain things should not be posted at a student's work space.

C. Harassment by Mary Fister.

In the summer of 1995, MNCS students were the first in the state of Minnesota to find deformed frogs. Mary Fister set out to write an article on the frogs which she planned to publish on the Internet. To obtain information for her Internet article, Mary Fister, who was not involved in the frog project, spoke with other students who were involved in the project.

Mary Fister persistently sought information from Jeff Fish, one of the students involved in the frog project. Jeff Fish did not want to give Mary Fister information. Mary Fister continued to request information from Jeff Fish and demanded that he fill out a questionnaire on the subject. Jeff Fish refused. Mary Fister continued to demand information. Jeff Fish became intimidated by Mary Fister and eventually provided the information sought by Mary Fister. Mary Fister published her article using quotes from Jeff Fish and other students without their permission.

On October 7, 1995, Jeff Fish's parents wrote Mary Fister the following letter:

> Dear Mary:
>
> It has come to our attention you have been soliciting information and quotes from our son...regarding the frogs, his feelings about the frogs, and the research surrounding them.... [W]e do not want you using information or quotes given to you by our son for publication.

Mary Fister made no attempt to remove references to Jeff Fish in her article. When asked why, she responded, "Because, I didn't see any reason why they would have a problem with the quote."

In an attempt to resolve the matter between Mary Fister and Jeff Fish, on October 11, 1995, Sandra Fish (Jeff's mother), Mr. and Mrs. Fister and MNCS representatives met at MNCS. Nothing was accomplished. Mr. Fister allowed others very little opportunity to speak. He was verbally abusive and shouted loudly at those present throughout the meeting. Mr. Fister even made a lewd gesture at one of MNCS's teacher/advisors. (Respondent's Appendix [R.A.] 13-14, 27.)

Following this meeting, Mary Fister posted the Fishes' October 7, 1995 letter to her at her work place at school. She also put up a sign that said "Mountain out of a mole hill" with an arrow pointing from it to the Fishes' letter.

MNCS was informed by Jeff and Scott Fish (Scott is Jeff's brother and was also a student at MNCS), as well as their parents, that they felt the posting of the letter constituted harassment. Mary Fister's action was viewed as both disrespectful and degrading to the Fish family. Mary Fister's advisor, Dean Lind, told Mary Fister that the Fish boys and the Fish family felt the posting of the letter constituted harassment and told her to take it down. (R.A. 31.)

Mary Fister admits nothing posted by other students at their work spaces was "offensive." Mary Fister admits she did not see anything posted by other students which was directed specifically at somebody else in the school such as a teacher or another student. Nothing similar to the "Fish letter" was ever posted by another student. The letter remained posted for two months before anyone at MNCS took it down the first time. Thereafter, whenever the letter was removed by

the MNCS staff, Mary Fister immediately would repost another copy of the letter.

Mary Fister was aware of the MNCS policies while she was continually posting the Fish letter. She has admitted that she was aware that her actions were viewed as being in violation of the school's harassment policy and that she could be suspended if she continued posting the letter.

Despite being specifically aware of the destructive and disruptive effect that her posting the letter had or could have on her colleagues, that her actions were viewed as constituting harassment and that she could be disciplined for her actions, Mary Fister deliberately reposted the letter continually throughout the entire school year. She admits she reposted the letter "whenever they took it down."

Mary Fister's continual reposting of the letter resulted in a material and substantial disruption of the educational process at MNCS. Teachers at MNCS described how the students, rather than focusing on their school work, were focusing on the conflict that the posting of the letter created. (R.A. 18, 23, 29.)

Evidence was presented that the reposting of the letter affected the Fish boys directly. Teacher Cindy Reinitz observed that every time Jeff Fish saw the letter reposted by Mary Fister he would come into her building "very distraught." (R.A. 24.) Jeff Fish would become so emotionally distraught that he was unable to work on his curriculum for the remainder of the day. (R.A. 25.) After the posting, Jeff's grades at MNCS were "incomplete in all sections." Previously Jeff had always been a good student. (R.A. 15.)

Teacher Nancy Miller described Jeff Fish as "ordinarily a very outgoing, upbeat and interactive personality." However, when in the presence of Mary Fister, Jeff would become quiet and extremely uncomfortable. (R.A. 22.) Mary Fister's actions toward the two Fish boys ultimately had such a severe

impact upon them that they chose to enroll in another school. (R.A. 16-17.)

Mary Fister was told that the Fish boys felt harassed and that they were unable to do their school work because of her actions. She claimed, "I don't know" when asked whether she cared if she hurt or upset either of the Fish boys. She similarly claimed, "I don't know" when asked if she gave any thought at all to the effect that the letter would have on others when she posted it.

D. History of Mary Fister's Suspensions and Expulsion.

Dean Lind advised Mary Fister and her parents on February 14, 1996, that the letter she had posted was disruptive to the other students and was viewed as harassment. (R.A. 31.) Mary Fister and her parents were also informed that her actions interfered with Jeff Fish's education and that she was acting in violation of the MNCS Policy and Minnesota's Fair Pupil Dismissal Act of 1974. On April 17, 1996, Dean Lind informed Mary Fister and her parents, in writing, that the letter she was posting served no educational purpose and was perceived to be harassment. (R.A. 7.) They were informed that if Mary Fister posted the letter one more time the school would have no choice but to suspend her for three days. (Id.) Mary Fister posted the letter again and was suspended beginning on April 19, 1996 for three days. (R.A. 31.) It should be noted that a full six months had elapsed between the first time Mary Fister posted the letter and her first suspension.

Upon receiving her first suspension, Mary Fister immediately sent an e-mail to all of the students at MNCS which stated:

> I have been suspended. If you want to know why, ask around. About half the people in Thomas Hall know the story. I don't know when I'll come back. The school has violated my rights. [T]he gong is vibating [sic].

The school never objected or disciplined her for sending this e-mail.

Mary Fister was told that if she continued to post the letter that it was likely she would be suspended again, this time for a longer period of time. She was also told that expulsion was possible if she continued in this fashion. Mary Fister reposted the letter on the morning of her first day back from her suspension.

Dean Lind once again explained to Mary Fister that the Fish boys felt harassed and were unable to do their school work. She was also told that MNCS did not like suspending her and wanted her back in school. By letter of April 25, 1996, Dean Lind gave notice that Mary Fister was being put on a five-day suspension. (R.A. 8.) The grounds for suspension were violation of paragraph 14 of the MNCS Policy. She was also suspended pursuant to Minn. Stat. § 127.29, subds. 2(a) and (b), due to her willful violation of any reasonable school board regulation and willful conduct which materially and substantially disrupted the rights of others to an education. (Id.) She was told once again the posting was disruptive to the entire school and must stop. (Id.)

Dean Lind wrote another letter to Mary Fister and her parents specifically putting them on notice that "[i]f Mary continues to insist on posting the letter from the Fish's when she returns to school, she will be put on an immediate five (5) day suspension at which time MNCS will begin expulsion proceedings." (R.A. 9.)

Upon her second return to school, Mary Fister immediately posted a handwritten sign which stated:

> The school has suspended me twice because of something I posted in my personal work area. They now are saying that they will expel me if I post it again. I believe that my First Amendment rights are being violated and denied.

Mary Fister admits the sign was never taken down and she was not disciplined for putting up the sign.

Mary Fister also put up another sign which stated: "I have been suspended for (in my opinion) no real reasons. This school has violated my rights." Mary Fister admits she was never disciplined for posting this sign.

Mary Fister once again posted the Fish letter. She was notified of her suspension on June 5, 1996 by Dean Lind. (R.A. 10.) She also received a letter to this effect and expulsion proceedings were initiated.

On June 28, 1996, an expulsion/dismissal hearing was held before an independent hearing examiner. (P.A. 32.) Both Mary Fister and her parents were present. Based on the evidence presented, the hearing examiner made detailed findings of fact and concluded as follows:

- That the repeated posting of the letter constituted a willful violation of a reasonable school board regulation;

- That the repeated posting of the letter in violation of school policy constituted willful conduct on the part of the student which materially and substantially disrupted the education process of others in the school.

(P.A. 34.) On July 23, 1996, Mary Fister and her parents were given notice that the School Board of MNCS had expelled her from attending school for a period of one year beginning on July 9, 1996.

E. Statement of the Proceedings.

Mary Fister's father, William Timothy Fister, who is not an attorney, initially made two applications to the federal district court in April and May 1996 seeking a temporary restraining order, restraining MNCS from suspending Mary Fister from school. The motions were denied without prejudice with leave granted to Petitioner to submit an amended motion which complies with the rules of the court. (P.A. 25.)

Thereafter, the federal district court appointed counsel to represent Mary Fister on a pro bono basis. Because the counsel appointed by the court and Petitioner had diverging viewpoints regarding how the case should proceed, counsel requested to withdraw. In response, MNCS pointed out that if counsel was allowed to withdraw from representation without a substitution of counsel, Mr. Fister, who is not an attorney, should not be permitted to act on behalf of his daughter. By order of the court, counsel was allowed to withdraw.

Mr. Fister, on behalf of his daughter Mary Fister, filed an Amended Complaint which asserted two causes of action: Count I - Freedom of Speech and Count II - Equal Protection. (R.A. 1.)

Both MNCS and Petitioner sought summary judgment. By judgment entered May 1, 1997, the district court granted MNCS's motion for summary judgment. The district court, citing this Court's decisions in Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986), Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988), and Tinker v. Des Moines

Indep. Community School Dist., 393 U.S. 503 (1969), concluded that based on the undisputed facts, MNCS did not act beyond its authority in determining that Mary Fister's posting of the letter constituted harassment within the contemplation of the MNCS policy. There was no First Amendment violation by MNCS. (P.A. 20-21.)

The district court further concluded that even if this was a First Amendment protected posting, the posting was posted for a full two months before it was taken down. The federal district court concluded:

> She [Mary Fister] had a chance, therefore, to express herself to the full. And a reasonable regulation under these circumstances did not in any fashion impair her rights. And on that claim, summary judgment is therefore granted in favor of the defendant.

(P.A. 21.)

With respect to the equal protection claim, the district court concluded that Mary Fister had not presented any facts demonstrating that she was treated differently than others who were similarly situated to her. (P.A. 21.)

William Timothy Fister, on behalf of his daughter Mary Fister, appealed the matter to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit, in an unpublished per curiam opinion, affirmed. (P.A. 1.) The Eighth Circuit agreed with the district court that MNCS did not violate Mary Fister's First Amendment rights. The Eighth Circuit explained:

> MNCS did not violate Mary's First Amendment rights, because Mary posted material directed at another student and his family, and school officials had received complaints that the

> student and his brother felt harassed and were suffering an interference with their education. See Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988) (noting public school students cannot be punished merely for expressing their personal views on the school premises, "unless school authorities have reason to believe that such expression will 'substantially interfere with the work of the school or impinge upon the rights of other students'").

(P.A. 3.) The Eighth Circuit also affirmed the dismissal of Mary Fister's equal protection claim because she had failed to offer evidence that she was treated differently from others similarly situated to her. (P.A. 4.)

REASONS FOR DENYING THE WRIT

As this Court stated in Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 267 (1988), "the determination of what manner of speech in the classroom or in school assemblies is inappropriate properly rests with the school board, rather than with the federal courts." MNCS enacted policies and procedures to maintain order in its school. These policies and procedures were enforced by the school board and are entitled to deference. The record is undisputed that Mary Fister posted material directed at another student and his family, and that school officials had received complaints that the student and his brother felt harassed by her actions and were suffering interference with their education. The record stands undisputed that the posting and reposting disrupted education for the students at MNCS. A dismissal hearing was held before an independent hearing examiner who concluded that Mary Fister had willfully violated a reasonable school board regulation and had engaged in willful conduct that

materially and substantially disrupted the education process of others in the school. (P.A. 34.) Pursuant to and in accord with Minn. Stat. § 127.29, subd. 2(a) and (b), Mary Fister was expelled.

Mary Fister's case certainly does not present one of the rare instances when federal courts should "intervene in the resolution of conflicts which arise in the daily operation of the school systems." Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 864 (1982), quoting Tinker, 393 U.S. at 507; see also Hazelwood, 484 U.S. at 273. The lower courts fully considered and correctly analyzed and decided the issues presented by Petitioner in accord with the decisions of this Court. The Eighth Circuit's decision is not in conflict with decisions of other circuit courts of appeals or this Court. Petitioner is, at best, voicing dissatisfaction with MNCS's school policy and the actions taken pursuant to that policy. Such dissatisfaction presents no basis for certiorari review.

Petitioner now contends that the expulsion hearing that MNCS provided was not impartial and that MNCS should have furnished Petitioner a lawyer. These assertions are not First Amendment or equal protection claims, which are the only claims asserted in Petitioner's complaint. The thrust of Petitioner's argument is not a constitutional challenge but a challenge to the school board's ultimate determination that Mary Fister be expelled. Such a challenge is not appropriate for certiorari review.

Petitioner also now asserts that Mary Fister's posting was "political in nature" and "pure speech." Fister relies on this Court's decision in Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969). Tinker involved three public school students who peacefully demonstrated against the Vietnam War by wearing black armbands and were suspended for their conduct. This Court held that the school violated the students' First Amendment rights because (1) the

protest was akin to pure speech because its context was of a political nature and (2) the protest was handled in a peaceful manner which was neither disruptive nor invasive of other rights. Id. at 505, 508. Unlike Tinker, Mary Fister's speech was neither political nor akin to pure speech. Mary Fister was not espousing any political views via the posting of the letter. She posted the letter of a third party; the "speech" was not her own. She posted it along with a sign "Mountain out of a molehill" which was directly aimed at another student and his parents. It should be noted that when Mary Fister posted her own complaints about MNCS's treatment of her, these postings were never removed. Mary Fister's postings, unlike the actions of the students in Tinker, were disruptive and interfered with the rights of other students to be secure and to be let alone.

Finally, as the Eighth Circuit concluded, there is no basis for Mary Fister's limited-public-forum argument. (P.A. 4.) MNCS did not hold the school premises nor Mary Fister's work space out as a public forum. (Id.) MNCS had a practice of removing or asking students to remove postings critical of others or harassing to others. Mary herself could not recall students ever posting anything offensive or anything directed at anyone else in school. Petitioner's argument has no basis in the facts.

CONCLUSION

Wherefore, Respondent Minnesota New Country School respectfully requests that certiorari be denied.

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

Phillip A. Cole
Counsel of Record
Kay Nord Hunt
Ehrich L. Koch
1800 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 339-8131

ANDERSON LAW OFFICE
Arthur E. Anderson
108 South Main Street
Le Sueur, MN 56058-1909
(507) 665-3349

Attorneys for Respondent

Dated: October 8, 1998

APPENDIX

Fister's Amended Complaint dated November 1, 1996 ..... A-1

April 17, 1996 "To Whom It May Concern" letter from Mr. and Mrs. Tomas Fish..... A-6

April 17, 1996 letter to Tim, Barb and Mary Fister from Dean Lind re: insubordination A-7

April 25, 1996 letter to Tim, Barb and Mary Fister from Dean Lind re: Mary put on five day suspension A-8

April 25, 1996 letter to Tim, Barb and Mary Fister from Dean Lind re: Mary's return to MNCS..... A-9

June 5, 1996 letter to Tim, Barb and Mary Fister from Dean Lind re: Mary Fister expulsion A-10

June 14, 1996 letter to Tim, Barbara and Mary Fister from Dean Lind..... A-11

Affidavit of Sandra Fish dated February 27, 1997..... A-12

Affidavit of Kim Borwege dated February 28, 1997 ..... A-18

Affidavit of Nancy Miller dated February 28, 1997 ..... A-21

Affidavit of Cindy Reinitz dated March 3, 1997 ..... A-23

Affidavit of Dean Lind dated February 28, 1997..... A-29

United States District Court
District of Minnesota
Fourth Division

William Timothy Fister
guardian and parent on behalf
of Mary Fister

Civil Action No. 4-96-339

Plaintiff

-vs-

AMENDED COMPLAINT

Minnesota New Country School

Defendant

I.
Jurisdictional Statement

1. This action arises under the United States Constitution, specifically the First Amendment and Fourteenth Amendments to the U.S. Constitution. Accordingly, this court has original jurisdiction of this action under 28 U.S.C. § 1331.

II.
The Parties

2. Mary Fister is twelve years old, and is a resident of St. Peter Minnesota.

3. Defendant Minnesota New Country School (hereinafter "MNCS") is a charter public school, Minnesota Independent School District No. 4007 operating in LeSueur Minnesota.

III.

Factual Background

4. Mary Fister was a student at the Minnesota New Country School (MNCS) in LeSueur Minnesota during the 1995-1996 academic school year.

5. The MNCS is and was a public school, which had a written policy for the 1995-1996 academic school year that permitted the students to publicly display things in their personal work area. This policy designated a limited public forum.

6. Mary Fister was suspended and expelled from the MNCS during the 1995-1996 academic school year for posting in her personal work area a thing which of and in its own content was not objectionable per the school's written policy on displaying things.

IV.

Causes of Action

Count I.

Freedom of Speech

7. Plaintiff incorporates by reference herein the allegations contained in paragraphs 1-6 and does further allege as follows:

8. The defendants' actions referred to herein were committed under color of state law, and pursuant to the policies, customs or practices of the MNCS.

9. The effect of the defendants' actions as stated herein has been to deprive the Plaintiff of her right of free speech under the law as guaranteed by the First Amendment to the United States Constitution rendering the defendants liable to the Plaintiff under 42 U.S.C. § 1983.

10. As a direct and proximate result of the defendants' actions the Plaintiff has suffered, and will continue to suffer, irreparable harm in the deprivation of her fundamental constitutional rights of free speech under the law, as well as injury to her academic standing from the suspensions and expulsion brought to bear against Mary by the MNCS.

Count II.
Equal Protection

11. Plaintiff incorporates by reference here the allegations contained in paragraphs 1-10 as fully as thought set forth verbatim herein.

12. The effect of the defendants' actions as stated herein has been to deprive the plaintiff of her right of free speech, and equal protection under the law as guaranteed by the First and Fourteenth Amendments to the United States Constitution rendering the defendants liable under 42 U.S.C. § 1983.

13. As a direct and proximate result of the defendants' actions the Plaintiff has suffered, and will continue to suffer, irreparable harm in the deprivation of her fundamental

constitutional rights of free speech and equal protection under the law, as well as injury to her academic setting from the suspensions and expulsion brought to bear against Mary by the MNCS.

V.

Requests for Relief

14. We request the Court to give the defendant, the Minnesota New Country School, instruction to immediately lift the expulsion of Mary Fister from the MNCS and to take sufficient action to immediately rescind the vote of the MNCS School Board and the offensive stain they placed on Mary Fister's public school record in their expulsion of Mary Fister from the MNCS.

15. We request the Court to award compensatory damages against the defendants, the Minnesota New Country School, in an amount in excess of $50,000.00, together with the costs of this cause and a reasonable attorney's fee as provided in 42 U.S.C. § 1988.

Dated: 11/1/1996

/s/ William Timothy Fister

William Timothy Fister
314 South Third St.
St. Peter, MN 56082
(507) 931-4083

I, Mary Fister, do hereby affirm under penalty of perjury that the statements contained in the foregoing Complaint are true and correct to the best of my information, knowledge and belief.

/s/ Mary Fister

Dated: 11/1/96

April 17, 1996

To Whom It May Concern:

Our son, Jeffrey, has requested to move out of Thomas Hall due to continued harassment from Mary Fister. Ms. Fister continues to post a letter she has repeatedly been asked to take down and her advisor has failed to impose any restrictions or discipline an Mary. While Kim Borwege has been an excellent advisor and a good match for the advisor/advisee relationship the situation created by Mary Fister and Dean Lind's tolerance of Mary's actions necessitates this move.

Sincerely,

/s/ Mrs. Tomas Fish

Mr. and Mrs. Tomas Fish

April 17, 1996

To: Tim, Barb an Mary Fister

From: Dean Lind (advisor at MNCS)

Subject: Insubordination

In letters to you from the Anderson Law office and myself, and by my verbal direction to you at a parent, advisor, student conference attended by myself and you (Mary, Tim and Barb Fister), and by verbal direction by me to Mary, Mary has been asked several times that a letter directed to her by Tom and Sandy Fish should not be displayed in the school since it serves no educational purpose and it is perceived as harassment by the Fish family. Mary continues to post the letter in her work area.

If the letter is put up one more time, I have no choice but to suspend Mary for a period of 3 days. She will not be allowed to return to school until there is a conference with Mary, her parent or parents, MNCS legal council and her advisor.

Sincerely,

Dean Lind

April 25, 1996

To: Tim, Barb an Mary Fister

From: Dean Lind (advisor at MNCS)

Subject: Mary put on five (5) day suspension

You are here by given notice that at this time Mary is being put on a five (5) day suspension.

The grounds for the suspension concern #14 of the MNCS Discipline Policy referring to, "endanger the safety, health, or well being of other students or school personnel" and section 127.29, Subdivision 2 a, and b of Minnesota's Pupil Fair Dismissal Act which concerns students, "Willful violation of any reasonable school board regulation," and "Willful conduct which materially and substantially disrupts the rights of others to an education." The posting of the letter is beginning to be disruptive to the entire school and must stop. After being specifically directed to not again post a letter from the Fish family to Mary because posting the letter causes distress to the Fish boys and results in "disrupting the rights of others to an education," Mary put the letter back up in her work area.

Since this is the second such offense, Mary will be suspended beginning today, April 25 and continue through May 1. Mary will be allowed to return to school at 8:30 AM on May 2, provided there is a conference with Mary, her parent or parents, Dean Lind advisor and MNCS legal council.

1f there are any questions, please atty. Art Anderson at 507-665-3349.

Sincerely,
/s/
Dean Lind

April 25, 1996

To: Tim, Barb an Mary Fister

From: Dean Lind (advisor at MNCS)

Subject: Mary's return to MNCS

Mary is scheduled to return to MNCS Thursday May 2, following a five day suspension for failing to following the directions of MNCS staff. The conference for Mary returning to MNCS will be held Wednesday, May 1 at 3:00 P.M. in MNCS Thomas Hall.

If Mary continues to insist on posting the letter from the Fish's when she returns to school, she will be put on an immediate five (5) day suspension at which time MNCS will begin expulsion proceedings. If more time is needed to arrange for a hearing officer to arrange an expulsion hearing, the suspension could be extended an extra five days.

I would like to point out the seriousness of this action. Expulsion can extend for a period of up to one half the following school year and is reported to the state board of education. It is a serious issue to be included in a student's file, not to mention the interruption in the student's education. It is the desire of MNCS to see all students successfully complete their education in school in a timely manner if they wish to. To insure that occurs, we need to maintain discipline and order to protect the rights of all students who attend MNCS.

Sincerely,
/s/
Dean Lind

June 5, 1996

To: Tim, Barb and Mary Fister

From: Dean Lind (advisor at MNCS)

Subject: Mary Fister expulsion

Mary has in the past been informed she would be suspended for five (5) days pending expulsion if she again posted the letter from the Fishs. She has been asked not to post the letter several times. This morning she reposted the letter.

As of this time Mary is suspended pending expulsion proceedings. You will be informed in the next five days of our continuing actions in this matter.

Sincerely,

/s/
Dean Lind

June 14, 1996

Tim, Barbara and Mary Fister
314 So. 3rd St.
St. Peter, MN 56082

Dear Mr. and Mrs. Fister and Mary,

The suspension for Mary is being extended for a period of ten days. We are in the process of arranging the hearing for possible expulsion. I will be gone with a group of school students on a trip to Washington D.C. next week so we are planning the hearing the following week. You will receive notice of the hearing shortly.

The dates for the extension relate to the no student day on June 7 and the week of vacation on June 10 to June 14.

Alternative education is not pertinant during summer education at MNCS.

Sincerely,

/s/
Dean Lind

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

William T. Fister, as guardian and parent on behalf of Mary Fister,

Court File No. 4-96-339

Plaintiff,

v.

AFFIDAVIT OF SANDRA FISH

Minnesota New Country School,

Defendant.

STATE OF MINNESOTA)
) SS.
COUNTY OF NICOLLET)

Sandra Fish, being first duly sworn upon oath, deposes and states as follows:

1. My husband Tom and I have two sons, Scott (the eldest) and Jeff, who were students at Minnesota New Country School (MNCS) for the 1995/96 school year. During that year, Jeff was in the 8th grade.

2. At the beginning of the school year, another student at MNCS, Mary Fister, began a pattern of persistent gathering of information from Jeff regarding the Ney Pond deformed frogs. The frogs were being studied by students in the school and was gaining state-wide recognition. She persistently sought information from Jeff. In the face of Jeff's repeated refusal, Mary Fister continued to pester Jeff and even demanded in what the teacher described as a forceful and rude manner that he fill out a questionnaire on the topic. My son

Jeff did not fill out the questionnaire and reported to me that he again told Mary Fister to leave him alone, but she did not listen to him. Mary Fister called Jeff at home and continued to harass him for the information. Finally, Jeff gave in and provided the information out of intimidation.

3. I observed Mary Fister's behaviors were intensely disturbing to my son and as a result his education was disrupted. In an effort to end the disruptive behavior, my husband and I wrote the following letter to Mary Fister, dated October 7, 1995:

> It has come to our attention you have been soliciting information and quotes from our son, Jeff, regarding the frogs, his feelings about the frogs, and the research surrounding them. As Jeff's parents, we do not want you using information or quotes given to you by our son for publication.

A copy of this letter is attached as Exhibit A.

4. Following our sending the above letter to Mary Fister, I was invited to a meeting at the school. The meeting was set, at least in part, to address the issue of my son being coerced to provide information for an article Mary Fister was writing about the deformed frogs and using my son's name in her publication. The meeting included the following individuals and took place right after school hours on 10/11/95: MNCS advisor/teacher John Brosnan; myself; MNCS advisor/teacher Cindy Reinitz; Mr. Fister, Mrs. Fister and Mary Fister.

It was impossible to resolve any of the issues because Mr. Fister allowed very little opportunity to speak in the meeting. In addition, Mr. Fister was relentlessly rude, verbally abusive and screamed at others throughout the meeting. In the meeting, Mr. Fister's behaviors were physically intimidating to me.

Before the meeting, which was right after school hours, my son Jeff was working on the computer in the school. Mr. Fister came into the room where Jeff was and silently paced back and forth behind where my son was seated which was intimidating to Jeff. After the meeting, my son was terrified because he had overheard the meeting and Mr. Fister's shouting and intimidation.

The following day, 10/12/95, I wrote a letter to the school explaining all of this and that I found it intolerable that any staff member or student should have to be subjected to the abusive attacks of Mr. Fister and to the manipulative schemes of his daughter, Mary Fister.

5. Soon after this meeting, in the fall of 1995, I observed a posting at Mary Fister's work area. This posting consisted of a copy of my husband's and my letter of 10/7/95 to Mary Fister. Along with this, and slightly overlapping the letter, was a sign which read, "Making a mountain out of a molehill" and with an arrow pointing from it to our letter to Mary Fister. As I was often in the MNCS building picking up my sons, I was with my son Jeff when we first noticed the letter. I felt the obvious intent of this posting was to make a statement that was both disrespectful and degrading to our family.

6. From November of 1995 through at least April of 1996, I verbally complained numerous times to MNCS staff about the letter being posted. To my knowledge, during this time no disciplinary action was taken with Mary Fister to abate this harassment of my sons. Even though the posting was being removed by MNCS staff and others, Mary Fister simply reposted other photocopies of our 10/7/95 letter to her.

7. Mary Fister's harassment of my sons by posting this letter was very disturbing to my sons and directly interfered with their education, making it difficult for them to do their school work.

8. Due to this continued harassment, on 4/3/96 I formally complained in writing to MNCS advisor Dean Lind. (See attached Exhibit B, my 4/3/96 letter to Mr. Lind.) I felt that the harassment by Mary Fister had become intolerable. It had been so stressful for my son, Jeff, that he had formally requested to be moved away from Mary Fister to another building. (See attached "To Whom It May Concern" letter of 4/17/96, Exhibit C.)

9. During this time frame I made it clear to MNCS staff that if they were unable to abate the harassment of my sons in the school by Mary Fister's posting of the letter, I would have to consider taking action with a higher authority outside of the school.

10. Mary Fister, through her action of posting my 10/7/95 letter to her along with her sign "Making a mountain out of a molehill," and her continued posting of copies of this letter throughout the school year created a material and substantial disruption of my sons Jeff's and Scott's education at MNCS in the 1995/96 school year. Jeff's grades at MNCS were "incomplete in all sections," according to transcript. In other words, the transcript reflects no work was completed. Previously, Jeff had always been a good student and in the current year he has received "A's" and "B's" at another school.

I also noticed that my son was so disturbed that he experienced a period of time of decreased sleep beginning around the time of Mr. Fister's confrontational meeting with us of 10/11/95 and continuing for a period of approximately two months in the period of time Mary was posting our letter in the school. In addition, throughout the school year, Jeff expressed to me his feeling that Mary Fister was making fun of him by posting the letter, that he was very uneasy to be around her and was frequently very angry, all as a result of Mary's behavior, including the posting of the letter.

11. As a result of Mary Fister posting our 10/7/95 letter to her in the school, my son Scott's education at MNCS also

was substantially disrupted. Ordinarily very good natured, during the period time of Mary Fister's harassment, Scott became very closed, spending more time in his room. I also feel Scott suffered from depression during this period of time and, although ordinarily a straight A student both before and after this time at MNCS, he simply stopped doing his work at MNCS.

12. I also observed, although to a limited degree, how Mary Fister's posting of the letter was disruptive to the education of other students at MNCS. In one instance, I observed a few students were evidently so upset by Mary Fister's harassment of Scott and Jeff, by repeatedly posting the subject letter, that they were discussing inappropriate ways of expressing their feelings about the situation. Being a school employee with another school district, I had to intervene.

13. On 4/24/96, right after Mary Fister posted yet another copy of our letter to her, even when warned not to, MNCS advisor Dean Lind indicated to Jeff and Scott that they should not come to school the next day, 4/25/96. The implication from Mr. Lind was that something was going to happen that day which would precipitate a confrontation with Mr. Fister. I brought my sons, Jeff and Scott, to school on that day as I felt they had a right to their education. When we arrived in the morning that day, the letter was once again posted and Mr. Lind was typing up a discipline notice to Mary Fister. Mr. Fister soon arrived and, in the room where I was sitting, he began pacing up and down behind me with his arms folded. This situation directly deprived my sons of their right to an education at MNCS as they were not only advised by Mr. Lind to stay home, but also were afraid to be at the school.

14. Given Mr. Fister's behaviors, as well as Mary Fister's persistent harassment of my sons at MNCS through the persistent posting of our letter, I felt that MNCS was not a safe environment for my sons and they were deprived of their

right to an education. This influenced my decision in enrolling my sons at a different school for the following school year where they both have been academically successful.

FURTHER YOUR AFFIANT SAITH NOT.

DATED: 2-27-97, 1997.

/s/
Sandra Fish

Subscribed and sworn to before me
this 27 day of Feb., 1997.

/s/ Marcus A. Lloyd
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

William T. Fister, as guardian and parent on behalf of Mary Fister,

Plaintiff,

v.

Minnesota New Country School,

Defendant.

Court File No. 4-96-339

AFFIDAVIT OF KIM BORWEGE

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

Kim Borwege, being first duly sworn upon oath, deposes and states as follows:

1. I am an advisor (teacher) for the Minnesota New Country School, the Defendant in this matter.

2. For a history of this matter, including Mary Fister's actions and related disciplinary proceedings at MNCS, refer to the Affidavit of Mary Fister's advisor/teacher at MNCS and my fellow staff member, Dean Lind. I was involved in some of the conferences with Mary Fister and Dean Lind regarding her posting of some of the copies of her letter from Mr. and Mrs. Fish.

3. MNCS staff, including myself, often take down things of an inappropriate or disruptive nature that are posted by students.

4. I observed that Mary Fister's act of posting the Fish letter was extremely disruptive to the education process of a number of students at the school. Many of the students were upset that Mary Fister's actions were continuing and, rather than focusing on their school work, they were focusing on the conflict that the posting of this letter engendered.

Many of the students were disturbed and felt it unfair that Mary Fister was doing this and some of the students took it upon themselves to take down Mary Fister's posting of the subject letter themselves.

Also, there was a disruption in discipline in the school because many students were upset because they did not understand why Mary Fister was somehow getting away with an inappropriate posting when she was not supposed to.

Many students were disturbed that Mary Fister seemed to be ignoring a directive to take down something that was ostensibly aimed at being disrespectful towards and harassing of another student; in other words, they were saying words to the affect, "Why does Mary think she does not have to follow directions from Advisor/Teachers?" I recall specifically that student Scott Fish told me that he was disturbed by Mary Fister's posting of the subject letter.

5. MNCS is a very small school. There is no separate administration. The limited staff have to handle administrative tasks in addition to their teaching duties. MNCS's time was taken up by dealing with Mary Fister's posting issue with conferences, suspension hearings and the like. As such, this took time directly away from the teachers' time ordinarily spent educating students in the school. Some students went so far as to tell me that dealing with this issue was taking up teachers' time that should be spent with them.

FURTHER YOUR AFFIANT SAITH NOT.

DATED: 2/28/97, 1997.

/s/
Kim Borwege

Subscribed and sworn to before me
this 28th day of February, 1997.

/s/ Kathryn M. Holicky
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

William T. Fister, as guardian and parent on behalf of Mary Fister,

Court File No. 4-96-339

Plaintiff,

v.

AFFIDAVIT OF NANCY MILLER

Minnesota New Country School,

Defendant.

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

Nancy Miller, being first duly sworn upon oath, deposes and states as follows:

1. I am a Teacher/Advisor at Defendant Minnesota New Country School, and functioned in this capacity during the 1995/96 school year.

2. I was Jeff Fish's Advisor/Teacher for approximately two months in the fall of 1995. Although I was never Mary Fister's Advisor/Teacher, I provided transportation for both Jeff and Mary to and from the school and home in the school's van, along with several other students. In this fashion, I provided transportation to Mary Fister almost all of the time, whereas with Jeff, I provided transportation off and on. This is the only time I would have any substantive contact with Jeff Fish or Mary Fister together.

3. At some point in the fall of 1995, I recall Mary Fister asking Jeff Fish for information regarding the "frog project." I recall that Mary Fister asked him for this information a couple of different times and was quite persistent about obtaining information from Jeff. Although I do not recall Jeff refusing to provide information, he was evasive about providing information and it was clear Mary Fister's persistence was making him very uncomfortable.

4. As the school year progressed, there was obviously some tension between these two students. On my transportation route home, I picked up Jeff prior to picking up Mary. Although Jeff is ordinarily a very outgoing, upbeat and interactive personality, when we would pick up Mary, Jeff would become quiet and was extremely uncomfortable around Mary Fister. Although Jeff continued to interact in his usual upbeat personality with other students, his closed and uncomfortable behavior with Mary Fister was markedly unusual to my observance. As tensions grew, they simply avoided each other.

FURTHER YOUR AFFIANT SAITH NOT.

DATED: February 28, 1997.

/s/
Nancy Miller

Subscribed and sworn to before me
this 28th day of February, 1997.

/s/ Kathryn M. Holicky
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT COURT OF MINNESOTA

William T. Fister, as guardian and parent on behalf of Mary Fister,

Plaintiff,

v.

AFFIDAVIT OF CINDY REINITZ

Minnesota New Country School,

Defendant.

STATE OF MINNESOTA)
(SS.
COUNTY OF LE SUEUR)

Cindy Reinitz, being first duly sworn upon oath, deposes and states as follows:

1. I was an advisor/teacher employed at Defendant Minnesota New Country School ("MNCS") from July 1, 1995 to June 30, 1996.
2. Although I was in a different building from Mary Fister throughout almost the entire school year, I did observe posted at Mary Fister's work station the 10/7/95 letter to her from Mr. and Mrs. Fish along with a sign which I assumed was made by Mary Fister stating "making a mountain out of a molehill" with an arrow pointing to the Fish letter. I observed that the subject letter was posted continually from some time in late October or early November of 1995 through May of 1996. Each time the letter was

taken down, Mary Fister simply posted another copy of the letter. I was, however, not directly involved in the disciplinary actions related to Mary Fister and the posting of the subject letter.

3. It was my observation that Mary Fister's posting of the subject letter, including the continual and repetitive posting of it, constituted a material and substantial disruption of the education process at Defendant Minnesota New Country School. I observed it to be particularly disruptive and distressing for one student in my building, Jeff Fish, although it was disruptive for many other students as well. Below are some examples:

    a. Student Jeff Fish was in my building for part of the 1995/96 school year. In fact, at one point in time he and his parents request that he be moved out of Thomas Hall, where Mary Fister was, and into Frog Hall, where I was, because Jeff indicated that he was very disturbed by Mary Fister's posting of the subject letter. Jeff, like all students in my building, would go to Thomas Hall daily to pick up mail, consult with other advisors, work on projects, or visit their friends. This often occurred during lunch.

    After Mary Fister had been instructed to take down the subject letter, every time Jeff observed it to be re-posted, I would observe him entering Frog Hall appearing to be very distraught and exclaiming to me, his advisor, "The letter is up again!" This often occurred at lunch time. I would observe Jeff in reaction to seeing the letter re-posted

as being extremely agitated and emotionally distraught. At least twice he was so upset he asked to call his mother at work, which he did.

Whenever he observed the letter re-posted, Jeff was too upset to continue to work on his curriculum for the remainder of the day, often from the noon hour on. This happened a number of times and was completely disruptive of Jeff's education.

b. During the numerous times that Jeff Fish was upset and agitated at the posting of the subject letter, I had to take my focus off the education of other students for whom I was responsible to take the time to help Jeff calm down and deal with his emotions.

c. As there are no administrators in the school, advisor/teachers take on this role. When advisor/teachers are dealing with discipline issues, this directly takes them away from time spent in instruction of students. In addition, Mary Fister's act of posting the subject letter was disruptive to the educational process as discipline, respect and order in the school eroded when Mary Fister continually acted contrary to instructions. As a result, other students objected to disciplinary actions asking why they should be disciplined when Mary Fister did not have to do what advisors instructed.

4. As a teacher, I use school policy in determining what a student can post or use for decoration in school. In particular, I do not allow a student to distribute or post anything which is perceived as harassment by another student or students. I have confiscated such items from students before and have removed things that were posted of an inappropriate nature in the schools in which I have taught. (For example, one of my second grade students recently wrote a note saying something unkind about a peer. That peer was upset by the note and the author of the note was disciplined according to school policy. It is considered "verbal abuse" in my current school policy.) I have never encountered a situation such as with Mary Fister where a student continued to post disruptive items even after having been repeatedly instructed not to.

5. In August of 1995, I was assigned to be Mary Fister's advisor/teacher although, as it would turn out, this was a role I would never fulfill. I had seen the Fisters at school prior to this but had very little reason or opportunity to interact with them. My only interaction with Mary had been brief self directed learning activity which I had facilitated. At an August meeting for students and parents I introduced myself to Mr. and Mrs. Fister and Mary as Mary's advisor and asked to arrange a standard preschool conference with the family. Mr. Fister informed me that I would not be his daughter's advisor, that he was an "anarchist" and that he would choose his own daughter's advisor.

   On October 9, 1995 my colleague John Brosnan, Mary Fister's advisor, informed me that Mr. Fister had phoned him inquiring how to file a complaint against me. Mr. Fister would not reveal the nature of

the Complaint. In response, John Brosnan arranged a meeting with the Fisters as a first step in an attempting to resolve Mr. Fister's complaint.

During this meeting on October 12, 1995, which Mr. Fister tape recorded, Mr. Fister continually interrupted others when they attempted to speak. He shouted loudly enough to be heard by people in other parts of the building. In addition, he engaged in both verbal and physical intimidating behaviors, which included walking back and forth behind my chair with his arms crossed while asking me questions. He would then interrupt me as I attempted to answer his questions. Mr. Fister made false accusations and disparaging comments to me. I left the meeting when I refused to continue listening to what I perceived as disrespectful behavior towards me. John Brosnan documented and later told me that Mr. Fister made a comment about me and made a lewd gesture at me (gave me "the finger") as I left the meeting in the presence of Barbara Fister and Mary Fister.

Since that time, Mr. and Mrs. Fister have made a false and baseless complaint against me to the MNCS School Board and the Minnesota Board of Teaching. That complaint was found by both organizations to be without cause.

FURTHER YOUR AFFIANT SAITH NOT.

DATED: March 3, 1997

/s/
Cindy Reinitz

Subscribed and sworn to before me
this 3rd day of March, 1997.

/s/ Arthur E. Anderson
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

William T. Fister, as guardian and parent on behalf of Mary Fister,

Court File No. 4-96-339

Plaintiff,

v.

AFFIDAVIT OF DEAN LIND

Minnesota New Country School,

Defendant.

STATE OF MINNESOTA)
) SS.
COUNTY OF LE SUEUER)

Dean Lind, being first duly sworn upon oath, deposes and states as follows:

1. I am an advisor (teacher) for the Minnesota New Country School ("MNCS"), the Defendant in this matter. I was Mary Fister's Advisor for much of the 1995/96 school year.

2. MNCS is a relatively small school serving approximately 85 to 90 middle and secondary students. MNCS is a "charter school" sponsored by the LeSueur/Henderson Board of Education. Its creation as a secondary charter school was granted by the Minnesota State Board of Education in 1994. As a charter school, MNCS represents a paradigm shift in education where the model of

learning is no longer that of students as empty vessels to be filled with knowledge by their teachers. (Refer to the attached Exhibit 1 "Minnesota New Country School" brochure.) As referenced in MNCS's brochure, the students take on direct, personal responsibility for their education rather than relying entirely on a teacher as the deliverer of instructional services. The school stresses, "values of high expectations (devoid of threats); of trust (until abuse); and of decency (values of fairness, generosity and tolerance)." Not only is there extensive student to student interaction but also teacher/student accountability is stressed. The students are ultimately responsible for attaining higher standards than traditional public schools, including higher standards of interpersonal tolerance, decency and fairness as stated above.

3. Sometime during the fall or early winter of 1995 Mary Fister posted in her work area a letter she had received from the parents of two fellow students, brothers Scott and Jeff Fish. Mr. and Mrs. Fish's letter, dated 10/7/95, was in reaction to Mr. and Mrs. Fish's and their son Jeff's perception that Mary Fister was persistently and coercively trying to obtain information from Jeff Fish regarding the Ney Pond deformed frogs which had gained attention in the media. The 10/7/95 letter from Mr. and Mrs. Fish to Mary was brief and reads as follows:

> It has come to our attention you have been soliciting information and quotes from our son, Jeff, regarding the frogs, his feelings about the frogs, and the research surrounding them. As Jeff's parents, we do not want you using information or quotes given to you by our son for publication.

4. When Mary Fister first posted a copy of Mr. and Mrs. Fish's letter, right next to it and with an arrow pointing from it to the letter was a sign which read "Making a

mountain out of a molehill." I was informed by Jeff and Scott Fish, as well as Mr. and Mrs. Fish, that they felt Plaintiff Mary Fister's posting of this letter constituted harassment. They also told me it was disturbing to them and interfering with the Fish boys' ability to receive an education. I informed Mary Fister of this and told her to remove the posting. When she did not, it was taken down by MNCS staff members, including myself, Nancy Miller and Kim Borwege. There may have been others. Whenever the posted letter was removed, Mary Fister immediately would insubordinately re-post another copy of the letter.

5. On February 14, 1996, at a parent/advisor/student conference, I informed Mr. and Mrs. Fister and Mary Fister that the letter Mary Fister was posting in the work area was perceived as harassment by fellow student Jeff Fish. I also told them this act interfered with Jeff Fish's education and was in violation of MNCS's discipline policy and the Fair Pupil Dismissal Act of 1974. I instructed Mary Fister not to display the letter in the future. Contrary to this instruction, I observed that Mary Fister continued to re-post the letter numerous times, immediately after it was taken down. Throughout this time frame, MNCS staff, including myself, were repeatedly informed by the Fishes that the continued posting of the letter was perceived by them as harassment and that it was disruptive to their education. It was also disruptive of the education process of other students in the school.

6. Mary Fister continued posting the subject letter with the full knowledge that the result would be further disciplinary action, including suspension and expulsion. Ultimately, this led to three suspensions, all of which I oversaw and administered: three days beginning on 4/19/96, five days on 4/25/96, and five days on 6/5/96. Each time I informed her that a condition of her return to school was that the subject letter not be posted. Yet, she ultimately posted the letter again upon her return. Mary Fister was expelled after a

hearing on 6/28/96 pursuant to Minnesota's Fair Pupil Dismissal Act of 1974.

7. Attached as Exhibit 2 is, "MNCS Discipline Policy and Operating Procedures, Daily Operating Procedures, 1995-96." Paragraphs 12 and 14 read as follows:

> 12. **Displays:** Students may decorate their individual work space but all pictures must be placed on bulletins boards, not taped to the wall. However, students may not have pictures/phrases of an inappropriate sexual nature, profanity, drug, tobacco or alcohol displayed in the school. Refusal to comply with this rule may result in suspension;
>
> 14. **Health and Safety:** Students may in no way endanger the safety, health, or well being of other students or school personnel. Fighting, threatening language, or other endangerment or harassment will be grounds for suspension and/or expulsion.

8. The student areas are not a public forum for expression; however, students are allowed to decorate these areas. Regardless of the term "personal work area," these are common areas readily observed by others in the building. Any decoration or postings of an inappropriate nature have always been taken down at the discretion of staff.

9. When I have observed student work areas in the school with postings that were inappropriate, critical of or aimed in a negative way at another, I have directed the student to remove the material. The student then removed the posting as directed. In fact, other students posted materials critical of Mary Fister and I directed that these items be removed. Again, the students did as asked and removed the items.

10. Mary Fister's posting of the subject letter, including the continual and repetitive posting of it throughout the school year, constituted a material and substantial disruption of the education process and right to an education of MNCS students in general and specifically of the Fish boys.

a. As previously mentioned, the posting of the subject letter, and its continued and repeated posting, was reported to me as being experienced as harassment by students Jeff and Scott Fish. For Jeff Fish in particular, the focus on the harassment aspect of the posting of the letter was distracting and emotionally upsetting for him, ultimately leading to his request in April of 1996 to be removed from the building Mary Fister was in due to Mary Fister's actions.

b. Mary Fister's posting of the letter materially disrupted the education of other students. The posting of the subject letter was a considerable focus for other students in the school who were not only disturbed that an individual student was being harassed, but also were distracted by the disciplinary implications. Mary Fister's insistence on posting near her desk the letter from the Fish family was noted by other students, was resented and caused a break down of respect, discipline and order. This materially disrupted class work as it took the students' minds off their class work and focused them on a conflict situation.

c. As there are no administrators as such at MNCS, the Advisors/teachers handle all administrative tasks. Any time an advisor's attention is taken

away from teaching to deal with discipline issues, there is a direct and broad disruption of the education received by all of the students assigned to that particular advisor. As a substantial amount of my time was devoted to dealing with this issue, it took directly away from my providing an education to the students of whom I was in charge.

11. During the 1995/96 academic year, Mrs. Fish indicated to me that if Mary Fister's posting of the letter continued unabated, the Fishes would have to consider legal action against MNCS.

12. During the 1995/96 school year, I met with Mary Fister and her parents numerous times regarding the disruption caused by the posting of the subject letter, and met with them through the suspension and expulsion process. Due to the words, behaviors and actions of Mary Fister's father, Tim Fister, I found it impossible to accomplish anything constructive to deal with the issue of the posting of the subject letter by Mary Fister. I and others, including MNCS staff, were subjected to Mr. Fister's verbal and physical behavior of a threatening and intimidating nature, including screaming and yelling and threats.

13. As we expect more of all students, we expected more of Mary Fister as an MNCS student. Indeed, Ms. Fister violated the school's mission and guiding principles by carrying on a campaign she knew was extremely disruptive of the education of others in the school. Moreover, her acts were an intentional invasion of the rights of other students.

14. I attach the following exhibits which explain a disciplinary process with Mary Fister regarding her disruptive acts. With the exception of Exhibit 2, which I received from the Fishes, I prepared all of these documents. They are as follows:

Exhibit 3 - 4/17/96 "To Whom It May Concern" letter from Mr. and Mrs. Tomas Fish

Exhibit 4 - 4/17/96 letter to Tim, Barb and Mary Fister from Dean Lind, subject: insubordination

Exhibit 5 - 4/18/96 MNCS Notification of Suspension of Mary Fister

Exhibit 6 - 4/25/96 letter to Tim, Barb and Mary Fister from Dean Lind, subject: Mary put on five (5) day suspension

Exhibit 7 - 4/25/96 letter to Tim, Barb and Mary Fister from Dean Lind, subject: Mary's return to MNCS

Exhibit 8 - 6/4/96 Notification of Suspension pending expulsion to Tim, Barb and Mary Fister

Exhibit 9 - 6/5/96 letter to Tim, Barb and Mary Fister from Dean Lind, subject: Mary Fister expulsion

Exhibit 10 - 6/14/96 letter to Tim, Barbara and Mary Fister from Dean Lind with attached "Notification of Suspension" extending suspension during the process of arranging a hearing for possible expulsion

Exhibit 11 - 4/19/96 "Affidavit in Opposition to Motion" (Affidavit of Dean Lind)

FURTHER YOUR AFFIANT SAITH NOT.

DATED: February 28, 1997.

/s/
Dean Lind

Subscribed and sworn to before me
this 28th day of February, 1997.

/s/ Kathryn M. Holicky
Notary Public